

CIVIL NO. 1:09CV93

Defendants.

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Plaintiff's *pro se* complaint alleges the U.S. Forestry Service was negligent in maintaining the property in and around Elk River Waterfalls in the Pisgah National Forest thereby causing the drowning death of her 16 year old son. **See Complaint, filed March 10, 2009, at 3.** There is nothing in the record that shows Plaintiff has been duly appointed as the representative of her son's estate which would entitled her to bring this action. **See Order, filed March 11, 2009 ("[I]t appears that plaintiff**

lacks standing to sue for wrongful death on behalf of her deceased son.”).

The Defendants move to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(6) on the grounds that 1) the complaint fails to establish liability under the Federal Tort Claims Act because there was no active or negligent act of any officer or employee of the United States that led to the death of Plaintiff’s son; 2) the Elk River Waterfalls are located in a recreational wilderness area open to the public without charge and, as such, N.C. Gen. Stat. § 38A-1, *et seq.*, prohibits liability under the facts alleged in the complaint; and 3) the Plaintiff does not have standing to sue in the absence of being duly appointed as a representative of her son’s estate. **See Motion to Dismiss, filed April 29, 2009, at 1-2.**

Pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the Plaintiff was advised of her responsibilities in responding to the Defendants’ motion to dismiss and was admonished to seek the services of an attorney in order “that her rights may be best protected.” **See Order, filed April 30, 2009.** The Order further directed that the Plaintiff file an appropriate response in accordance with the instructions contained therein

on or before May 16, 2009. ***Id.* at 5.** Now, some three months after that deadline has passed, the Plaintiff has not filed any additional pleadings.

Therefore, after a thorough review of the record, the Defendants' motion, and there being no response or objections filed by the Plaintiff, the Court finds that, for the reasons stated by the Defendants, the motion should be granted.

IT IS, THEREFORE, ORDERED that the Defendants' motion to dismiss is **ALLOWED**, and this matter is hereby **DISMISSED WITH PREJUDICE** in its entirety.

Signed: August 20, 2009

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

